IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4388 of 2011

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Rajendra Kishore Sinha, Son of Late Satya Narain Prasad, Resident of Mohalla- Chandmari, Near Amin Lodge, P.S.- Motihari, P.O.- Motihari, District- East Champaran

.... Petitioner

Versus

1. The State of Bihar
2. Finance Commissioner, Bihar, Patna
3. The Joint Commissioner, Lekha Prashasan, Provident Fund Directorate, Bihar, Patna
4. The Deputy Finance Commissioner, Bihar, Patna
5. The District Provident Fund Officer, Motihari, East Champaran

.... Respondents

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Appearance:

For the Petitioner/s : Mr. Ajay Kumar Singh and
Mr. Shashank Shekhar Sinha, Advocates.

For the Respondent/s : Mr. Priyadarshi Matri Sharan, AC to AAG 15

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 19-01-2018

Heard learned counsel for the petitioner as well as learned A.C. to AAG 15 on behalf of the State and its authorities.

2. The present Writ Application has been filed for a writ of mandamus commanding the respondent authorities to grant Assured Career Progression benefit to the petitioner w.e.f. 09.08.1999 in view of the Finance Department Notification no. 4685(F-2) dated 25.06.2003 and, accordingly, to fix his consequential monetary benefits.

3. According to the petitioner, he was initially appointed as a Work Sarkar on 25.10.1970 in a Work Charge Establishment and

thereafter he was accommodated in the regular establishment on the post of Typist and joined in Tube-well Drilling Circle, Muzaffarpur in 1973. According to him, during his entire service period, prior to his retirement on 31.03.2004, he was not given the benefit of financial progression and even though he had no avenue of promotion from the post of Typist, he was continued in the same pay scale till his retirement.

4. Learned counsel submits that earlier a time-bound-promotion scheme was in existence which was replaced later on by the Assured Career Progression (ACP) Scheme 2003 by virtue of the Rule namely Bihar State Employees Service Conditions (Assured Career Progression) Rules, 2003 (hereinafter 'Rules') framed by the State Government in exercise of its power under Article 309 of the Constitution of India. The said Rules framed in the year 2003 has now been repealed, it has been replaced by the Modified Assured Career Progression (MACP) Scheme 2010. It is his specific case that when the petitioner moved this Court earlier vide CWJC No. 17173/2009, a bench of this Hon'ble Court directed the respondent no. 3, the Joint Commissioner, Lekha Prashashan, Provident Fund Directorate, Department of Finance, Govt. of Bihar to consider his grievance and dispose of the same by a reasoned and speaking order within a maximum period of four months from the date of receipt / production

of a copy of the order. Pursuant to the said direction of the Hon'ble Court, the Joint Commissioner, Accounts Administration (Respondent no. 3) has passed an order as contained in Memo No. 189 dated 16.03.2010 by which the claim of the petitioner for grant of financial progression benefit under the ACP Scheme 2003 has been rejected on the ground that the petitioner had not passed the final stage examination in the 1st and 2nd paper of Departmental Accounts Examination prior to his retirement. The Office Order issued vide Memo No. 189 dated 16.03.2010 has been challenged by filing an Interlocutory Application being I.A. No. 1264/2016.

5. In course of argument learned counsel for the petitioner has assailed the Office Order issued vide Memo No. 189 dated 16.03.2010 on various grounds, his first contention is that passing of the Departmental Accounts Examination in the case of the present petitioner was not necessary for getting a financial progression because the post which the petitioner was holding had no promotional avenue. He submitted that there was no prescribed statutory rule for recruitment or promotion from the post of Typist to any other post. He was working on the same post in the same scale of pay or the revised scale and, therefore, it was not a case where the petitioner had a chance of promotion to the next higher post for which he had to pass in any examination.

6. Learned counsel representing the State has not denied to this extent that the post which the petitioner was holding had no promotional avenue and, therefore, it is not a case where he had to pass a limited kind of examination or a Departmental Accounts Examination for purpose of his promotion to the next higher post.

7. Learned counsel representing the petitioner has relied upon a Division Bench judgment of this Court rendered in the case of **Uday Shankar Prasad Vs. The State of Bihar & Ors.**, reported in 2017(3) PLJR 824. In the said case, the Hon'ble Division Bench was considering the contentions advanced on behalf of the appellant that he was appointed on the post of Compilation Clerk and there was no further avenue for promotion from the post of Compilation Clerk to any other higher post. The petitioner was stagnating in the said post. In that context, the Hon'ble Division Bench had occasion to consider the relevant provisions of the Bihar State Employees Service Conditions (Assured Career Progression Scheme) Rules, 2003 (hereinafter referred to as 'the Rule 2003'), the rule provided under Bihar Board Miscellaneous Rule, 1958 regarding passing of the Departmental Examination and thereupon the Division Bench found that in the admitted facts that there was no opportunity of further promotion to a higher post, the ratio of the judgment of this Court in the case of **State of Bihar & Ors. Vs. Kusheshwar Nath Pandey**,

reported in 2013 (1) PLJR 939, was distinguishable. It was found that in the case of **Kusheshwar Nath Pandy** (Supra) it was a case pertaining to grant of time bound promotion under a particular scheme and the said case was pertaining to promotion of a Dresser to some higher post, thus, it was not applicable to the appellant of the case.

8. Since in the present case as well it has been an admitted position that there was no further avenue of promotion for the petitioner and he continued to stagnate on the post of Typist in the same scale or the revised scale of the said pay scale, the petitioner has been able to make out a case in the line on which the judgment of the Division Bench of this Court in the case of **Uday Shankar Prasad** (Supra) has been rendered.

9. One of the grounds raised by the petitioner is that he had been exempted from the Departmental Accounts Examination by the competent authority and his case was recommended for grant of financial progression under the ACP Scheme of 2003. In view of the fact that this Court has been convinced with the first ground itself which has been discussed in the preceding paragraphs, the Court is not required to go into the second ground which has been pleaded before this Court.

10. In the result, the Writ Application as well as I.A. No. 1264 of 2016 are allowed. The impugned order (Annexure-6 to I.A.

No. 1264 of 2016) is quashed. The respondent no. 3 is now directed to take necessary steps towards grant of financial progression benefits to the petitioner in terms of the ACP / MACP Scheme in vogue. The entire consequential benefits must be paid to the petitioner within a period of three months from the date of receipt / production of a copy of this order.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
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